

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
NORTHERN DIVISION

**FILED**  
SEP 30 2010

*[Signature]*

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THOMAS ANDREW WAGER

Plaintiff,

-vs-

FREHNER CONSTRUCTION CO., INC.,  
*et al.*

Defendants.  
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CIV. 09-3015

OPINION AND ORDER

Defendant Frehner Construction Company filed motions to dismiss for lack of personal jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(2), Docs. 51 and 78. There is now also pending a motion to dismiss for failure to join indispensable parties and an alternative motion to transfer filed by defendant CMI Terex Corporation.

The motions to dismiss for lack of jurisdiction should be denied for the present without prejudice to reconsider. The United States Supreme Court has granted *certiorari* in two matters that may further clarify the extent of long-arm jurisdiction over a corporation who places a product in the stream of commerce through a distributor (or auction house) that targets a national market or when other entities distribute in the forum state products placed in the stream of commerce by the corporation. J. McIntyre Machinery v. Nicastro, Supreme Court Docket 09-1343 (cert. granted September 28, 2010), and Goodyear Luxembourg Tires v. Brown, Supreme Court Docket 10-76 (cert. granted September 28, 2010).

Now, therefore,

IT IS ORDERED that defendant's motions, Docs. 51 and 78, to dismiss for lack of personal jurisdiction are denied.

Dated this 30th day of September, 2010.

BY THE COURT:

*[Signature: Charles B. Kornmann]*  
CHARLES B. KORNMAN  
United States District Judge

ATTEST:  
JOSEPH HAAS, CLERK

BY: *[Signature: Sarah Tubersch]*  
DEPUTY

(SEAL)